

[Review] William Twining (2019) Jurist in context. A memoir

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Reviews

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William Twining (2019) *Jurist in Context. A Memoir*, Cambridge University Press, 2019, 382pp, ISBN 9781108480970 (Hardback), ISBN 9781108703673 Paperback

This elegant *Memoir* is nominally about William Twining's life as a jurist. But it is actually much more. It is a book that discusses theoretical and practical changes in such matters as legal education, jurisprudence, perception of law and legal profession. Essentially, the book concerns 'context'. Thus this is a book to be welcomed by legal scholars, practitioners and students interested in understanding law. As suggested in the Preface the book is centrally concerned with the health of the discipline of Law and only incidentally engages with the nature or essence or concept of law. 'The central thesis is that the mission of Law as an academic discipline, like other disciplines, is to advance and disseminate understandings of its subject matters, but that it has some way to go to realize its potential as a marvelous and important subject. Those subject matters are extensive, ill-defined and changeable' (p. xiv). Law has a variety of sub-disciplines and Jurisprudence, as conceptualized and advanced in the *Memoir*, is one. It is a particularly important sub-discipline. With its continuously moving boundaries, Jurisprudence has the potential to support law and its practice in overcoming constructively and creatively the challenges that globalization poses.

The book is divided into twenty chapters which guide the reader through the learning journey Twining has experienced, from childhood and education, to the elaborations of globalization and jurisprudence, and finally to what he labels as 'unfinished business' (Chapter 20). Unfinished business includes, among others, a project on law in multilingual societies; follow-up activities on 'Human Rights: Southern Voices', and a project on Legal Records at Risk. Chapter 1 explains to the reader the manner in which Twining conceptualizes Jurisprudence. He uses Jurisprudence and Legal Theory as synonyms and proposes a multifaceted idea of Jurisprudence—one which sees it as a heritage, as an ideology, and as an activity. Also, he adds "It is important to distinguish between the discipline of Law (the name of a subject) and the subject matters of the discipline (law with a small l). In the previous paragraph I suggested that law (with a small l) is pervasive, dynamic, and so on' (p.xiv).

The following three chapters (Chapters 2-4) give the context in which the Jurist grew up and his ideas about Law developed. From primary school to university, the chapters describe how the life in Uganda, studying at Oxford and at the University of Chicago, presented him with life experiences (including his marriage to Penelope) and three main academic encounters (Hart, Llewellyn, and Collingwood) that all contributed to differing extents to early developments as a jurist. A picture of a curious—although not only for law—student emerges. He reports:

I [...] applied to read Law in Oxford for largely negative reasons. I did not enjoy my legal studies nor take them very seriously for my first two years, doing the minimum necessary for preparing generally second-rate essays and scraping through the start-of-term tests. My mind was more on literature, politics and Africa (p.18).

Africa and activism are themes recurrent in Chapter 5 and Chapter 6. These two chapters are about Twining's experience in Khartoum and Dar es Salam. In their structure, narrative and content they explain the importance of context in the study of law. In both Chapters the sections on People and the extract from a Diary, are particularly engaging for the reader. The Chapters examine the important contradictions and questions that arise when teaching law concerns the influence of colonialism, the tension between formal and informal justice, the very nature of customary law—these two chapters tell us a great deal about the *other/s* in law.

Meeting Karl Llewellyn and his widow Soia Mentschikoff was important for Twining. Llewellyn - and his work on Legal Realism - 'has been the most important academic influence on my thinking' Twining states (p.86). Chapter 7 is about the years after Llewellyn's death and the development of a project recording the unpublished works that Llewellyn had left. In presenting anecdotes and facts, Twining reminds the reader of the importance of the personality of an author when interpreting their work. He states:

It is impossible to work with the papers without being made acutely conscious of Llewellyn's personality, always vivid, sometimes dominating, easily tempting one from the path of conventional legal scholarship. I confess to having indulged myself so that sometimes my quest for Llewellyn the jurist has become a quest for Llewellyn the man. In the early stages this was almost inevitable. The disorder was in itself revealing and produced juxtapositions that accentuated certain aspects of his personality (p.82).

Chapter 7 is particularly beautiful for its consideration of the role of Soia Mentaschikoff and how she encouraged and supported Twining to dig into Llewellyn's unpublished work. Thus, with its focus on these two figures Chapter 7 inspires the reader to reflect on the importance that relationships have on the development of someone as legal scholar, on the interpretation of Law, and even on the practice of law. Chapter 7 recounts also how the Law in Context series was created, with Twining taking up a suggestion from Robert Stevens to create such a series, and the characterization 'Law in Context' derived in part, so as to avoid obvious titles such as 'Law and Society' from Addison Mueller's book *Contract in Context*.

As Twining suggests, the *Memoir* provides insights into a variety of areas of Law. These include Jurisprudence, Evidence, Legal Education, Law and Development, Comparative Law and Globalisation and Law. Chapters 8 to 10 describe how the teaching and thinking of those areas of Law developed. Chapter 8 catches the reader's eye with a description of the seven years Twining taught at the Queen's University Belfast. It is here that, in partnership with David Miers, he developed the 'How to Do Things with Rules' project. The project and the course on which it drew upon:

focused on the interpretation of social and legal rules and the continuities between them in a deliberately concrete way, exploring the tensions between generality and particularity largely through analysis of case studies drawn from several areas of

social life in addition to law; much of my Jurisprudence teaching involved close reading of selected texts, not all of them 'philosophical' (p.101).

Being in Belfast had a significant impact on Twining's thinking on Normative Jurisprudence which is at the core of Chapter 9. Again, as for the previous Chapters, the reader will become aware of the importance of context to jurists and their thinking are influenced. Chapter 9 opens with the observation:

Towards the end of my time there I became involved in public debates about emergency powers and torture and this linked closely with my growing interest in Jeremy Bentham's utilitarianism in relation to rights, justice and public policy. I have written extensively in this area recently, especially in my *General Jurisprudence* (2009), but many of my ideas were forged in observing and reflecting on the conflicts in Northern Ireland, which is why this chapter belongs to the Belfast period' (p.104).

Then the Chapter takes the reader intensely through an analysis of the manner in which Twining's study of Normative Jurisprudence relates to torture, human rights and justice. Standpoint, questioning and 'thinking like a lawyer' is the title of Chapter 10 in which Twining considers the importance of clarifying perspective in analyzing and teaching law. Clarifying standpoint can be done following a three-stage questions: 'who am I? at what state in the process am I? What am I trying to do?' (p.119). These are questions that then relate to legal method, legal reasoning and more generally to 'thinking like a lawyer'. Twining suggests that this Chapter and one that follows (Chapter 11) entitled 'Social and Legal Rules', are more analytical than preceding Chapters. But in their exploration of the theoretical and practical aspects of handling rules in contexts, these two Chapters offer important practical aid to lecturers to transfer their knowledge critically.

The experience at Belfast was followed by ten years at the University of Warwick. Chapters 12-14 cover these years. These years were characterized by critical transformation of law degree aiming at 'broadening the study of law from within' and thinking about law in broader terms. Chapter 12 is also about the 'Rethinkings' that any scholarly enquiry deserves. The Chapter then focuses on specific examples of rethinking including the work of Patrick Atiyah, Patrick McAuslan, and Michael Chesterman. Chapter 13 follows by clarifying the relation between Jurisprudence, law in context, realism and doctrine. Acknowledging that 'law in context' is a broader term which can accommodate a variety of approaches to law, and political views, and that it has been criticized by other scholars (including Simon Roberts), Twining clarifies:

The label is vague, but not devoid of content. 'Law in context' is not a theory of or about law, nor is it a school or a branch of legal philosophy. It overlaps with 'realism' and has a loose historical connection with ALR.¹ What is significant as 'context' itself depends on context. For example, in writing about a specific juristic text, the concerns and situation of the author are nearly always relevant; historical and cultural background are often important; the text may belong to some specific literary or scholarly genre; the text may be a contribution to a contemporary debate; and so on. What is significant depends on the enquiry. Contexture ('to weave') suggests interdisciplinary perspectives, but 'law in context' is broader than that; for

¹ American Legal Realism

example, it includes but goes beyond socio-legal studies which applies mainly to empirical research using social scientific methods (p.163).

Chapter 14 deals with *Rethinking Evidence*, a project that although still unfinished, aims to advance the idea that facts are important for developing both general intellectual thinking and specialism. Rightly, Twining points out:

There is an intimate relationship between Evidence and Legal Theory. I have already indicated how the gravitational pull of doctrine both impoverished and distorted Evidence scholarship and marginalised the field within the discipline of Law. Similarly, analytical jurists have paid relatively little attention to the connections between Evidence and Legal Theory. Theorising about evidence in law inevitably involves philosophical questions about epistemology, epistemological scepticism, inferential reasoning, proof and probabilities that had generally fallen outside the sphere of mainstream Jurisprudence (p.184).

Chapter 15 brings the reader to London, specifically to Bentham House at University College London, (UCL) where Twining became Quain Professor of Jurisprudence, and engaged with the Bentham project. The years at UCL also saw Twining at the University of Miami. In Chapter 16, Twining details how relationships with the work of Bentham, Dworkin, MacCormick and Anderson were influential, even if contrasting, on his thinking. But Chapter 16 presents a passage, which in my view says a lot about some attitudes within academia nowadays. Writing about the people he met during those years, Twining writes:

Not many overt critics, because the main technique of those from whom I differed most was Ignoring. That sometimes irritated me but, on the whole, I was pleased because I had plenty of sounding-boards and those with whom I had the most profound differences about the nature and roles of Jurisprudence tended not to move off their own confined territory (p.206).

Chapter 17 offers a comprehensive, timely and critical overview of Legal Education and the manner in which Twining has contributed to advance and broaden the study of law. Chapter 18 and 19 consider the remarkable contribution that Twining has offered with his work on Globalisation, and General Jurisprudence. The book is further enriched by endnotes, tables and notes which among other contributions represent significant learning sources for both undergraduate and postgraduate students. The pictures, at the end of the book, present a visual dimension of the Jurist and those who have accompanied him in this journey – a source that further helps the reader with their reading in context.

The title of the book includes the term 'Jurist' and Twining explains that he is a kind of jurist who—although not trained in disciplines other than law—recognizes that many disciplines, and the experience of scholars with different academic and professional backgrounds, are significant for the study and understanding of law. At the beginning of the book Twining writes 'I will try to show where I come from, why I believe what I believe about law and its study, and where this might lead' (p.xv). In doing so, he shows that studying, learning and practicing law comprehensively, critically and creatively, are better achieved if the emotions, personality and history of the jurist are acknowledged and used proactively, although within a rigorous framework. Reading this book might put the reader in a similar position as watching a classical ballet: harmony, elegance, and intensity of expression, are achieved within a framework of rigor and reflective exercise.

I reviewed a book by Twining ten years ago, and my conclusion remains the same—ultimately, Twining shows that a jurist is, at the same time, a researcher, a scholar and an activist. Indeed as Twining points out:

This book is by someone who is an enthusiast for his discipline, who believes that theorizing can contribute greatly to understanding law at many levels and that this enterprise should be of interest to anyone who wishes to understand law in these confusing times – which should, of course be nearly everyone (p.6).

This Memoir—maybe unconsciously—emphasizes that inevitably human relationships and their dynamics stand at the core of approaching law. This is the encouraging legacy that *Jurist in Context* leaves to the future generations of jurists, who are raised in a challenging globalized world.